

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN**

ADAM STREETER, an individual,

Plaintiff,

v.

Case No. 3:14-cv-00555-wmc

ELI LILLY AND COMPANY, a corporation;
and DOES 1 through 50, inclusive,

Defendant.

PLAINTIFF’S MOTION FOR LEAVE TO FILE AMENDED COMPLAINT

Plaintiff Adam Streeter, by and through his undersigned counsel, seeks leave to file the proposed First Corrected Amended Complaint pursuant to Federal Rule of Civil Procedure 15(a), in order to correct certain facts and clarify his causes of action.

Rule 15(a)(2) allows a party to amend “with the opposing party’s written consent or the court’s leave.” Fed. R. Civ. P. 15(a)(2). Plaintiff Adam Streeter filed his complaint on August 11, 2014, Dkt. 1. Plaintiff’s proposed First Corrected Amended Complaint is attached hereto.

Plaintiff’s proposed amendments are intended to correct, clarify, and narrow his complaint as follows: (1) removing claims about Cymbalta’s efficacy and efficacy to treat pain; (2) removing claims about “all adverse side effects” to focus only on withdrawal symptoms; (3) clarifying Plaintiff’s negligence, design defect, and fraud causes of action; and (4) removing Plaintiff’s Wisconsin Consumer Act cause of action.

Rule 15(a) provides that a court “should freely give leave [to amend] when justice so requires.” Fed. R. Civ. P. 15(a)(2). While granting leave to amend is “within the discretion of the District Court,” leave to amend should be freely given “[i]n the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant,

repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.” *Foman v. Davis*, 371 U.S. 178, 182 (1962); see *Shimko v. Jeff Wagner Trucking, LLC*, No. 11-CV-831-WMC, 2014 WL 7525657, at *2 (W.D. Wis. Mar. 10, 2014) (quoting *Forman*, 371 U.S. at 182).

None of the *Foman* factors are present here. First, as undersigned counsel for Plaintiff only recently entered appearances, there has been no undue delay. Second, the proposed amendments are made in good faith and are intended to narrow and clarify the scope of the issues before the Court. Third, these are Plaintiff’s first proposed amendments. Fourth, there is no prejudice to Lilly in having the allegations against it narrowed and clarified. Discovery only recently began following the Court’s issuance of a scheduling order on February 23, 2015. Finally, the amendments are not futile.

Plaintiff therefore respectfully requests that the Court grant his motion to file the proposed First Corrected Amended Complaint.

DATED: May 8, 2015

KELLER ROHRBACK L.L.P.

By: /s/ Meredith Gray

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CERTIFICATE OF SERVICE

I certify that on May 8, 2015, a true and exact copy of the foregoing Plaintiff's Motion for Leave to File Amended Complaint was served by United States mail and email, addressed as follows:

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